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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,	)	2:11-cr-00368-JCM (PAL)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JOSIYAH MENO,	)	
	)	
Defendant.	)	
_____	)	

**STIPULATION AND ORDER OF FACTS AND CONCLUSIONS OF LAW TO**

**DISMISS INDICTMENT**

COMES NOW the defendant, JOSIYAH MENO, by and through  
his attorney of record, Osvaldo E. Fumo, Esq., of the law firm, Pitaro & Fumo, Chtd. and  
Assistant United States Attorney Andrew Duncan, and hereby submits this Stipulation of Facts  
and Conclusions of Law, and hereby asks this Court to dismiss the Indictment against Meno.

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2 This motion is based on the attached Memorandum of Points and Authorities together  
3 with the pleadings and papers on file herein and any argument, testimony and evidence that may  
4 be presented at the hearing on this Motion.  
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8 /s/ Osvaldo E. Fumo, Esq.  
9 OSVALDO E. FUMO, ESQ.  
10 601 LAS VEGAS BOULEVARD, S  
11 LAS VEGAS, NEVADA 89101  
12 ATTORNEY FOR THE DEFENDANT  
13 JOSIYAH MENO

/s/ Andrew Duncan.  
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LAS VEGAS, NEVADA 89101  
ATTORNEY FOR UNITED STATES OF  
AMERICA

#### 14 MEMORANDUM OF POINTS AND AUTHORITIES

15 It is hereby stipulated and agreed by Osvaldo E. Fumo Esq., and Assistant United States  
16 Attorney Andrew Duncan that the following facts and conclusions of law are correct:

17 On October 11, 2011, a grand jury returned an Indictment (Doc. #1) against Defendant  
18 Josiyah Meno, charging him with one (1) Count of felon in possession of a firearm in  
19 violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). Meno made an initial appearance on  
20 October 11, 2011, was arraigned and pled not guilty to the charge in the Indictment. *See*  
21 *Minutes of Proceedings* (Doc. #10). Following a detention hearing, Meno was detained  
22 pending trial. *Id.*; Order of Detention (Doc. #14).  
23

24 The Government then filed an unopposed Motion for Psychiatric or Psychological  
25 Evaluation pursuant to Title 18 U.S.C. 4241 (a). The Court granted the Government's Motion  
26 in an Order entered February 23, 2012. (Doc. #25). The February 23, 2012 order, directed  
27 the U.S. Marshals Service ("USMS") to transport Meno to a suitable facility for a psychiatric  
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1 examination to determine if he was suffering from a mental disease or defect rendering him  
2 mentally incompetent to understand the nature and consequences of the proceedings against  
3 him or to assist properly in his defense.  
4

5       Meno was transported to the Metropolitan Detention Center in Los Angeles,  
6 California, where a psychiatric examination was conducted. A forensic evaluation report was  
7 submitted to the court and counsel. The report found that Meno was not competent to stand  
8 trial or to assist in his own defense and recommended that he be sent to a federal medical  
9 center for evaluation and treatment for restoration to competency.  
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11       The matter was heard on July 19, 2012, at which time the Government requested Meno  
12 be committed to a federal medical center for evaluation and treatment for restoration to  
13 competency. Pursuant to 18 U.S.C. §4241(d), Counsel for Meno was required to agree to the  
14 Government's request. Accordingly, the Court agreed and ordered the recommendations in  
15 the reports submitted during the hearing. (Doc. #41).  
16

17       Pursuant to the July 19, 2012 ruling, the court entered an Order on August 1, 2012,  
18 committing Meno to the custody of the Attorney General for hospitalization and treatment in a  
19 suitable facility. (Doc. #46). As required by 18 U.S.C. §4241(d), the purpose of the  
20 commitment was to see whether there was a substantial probability Mr. Meno could be  
21 restored to competency in the foreseeable future. *Id.* Based on the August 1, 2012, Order,  
22 Meno was transported to the Federal Medical Center in Butner, North Carolina ("FMC-  
23 Butner"), for a period not to exceed four-months as further dictated by 18 U.S.C. §4241(d).  
24

25       On February 14, 2013, a report was sent to this Court with findings from the FMC-  
26 Butner facility. The report contained the findings made by a staff psychologist, staff  
27 psychiatrist, and staff neurologist with the FMC-Butner and stated that Meno was suffering  
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1 from a mental disease or defect that rendered him mentally incompetent to the extent he could  
2 not understand the nature and consequences of these proceedings and could not assist in his  
3 defense. The authors of the report further stated that there was not a substantial probability  
4 Meno could be restored to competency in the foreseeable future. Upon completion of the  
5 report, FMC-Butner transferred Meno back to this district for further judicial proceedings.  
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7 On March 28, 2013, the Court held another hearing with counsel to determine  
8 how counsel proposed to proceed in this case. During the hearing, the Government  
9 represented that pursuant to 18 U.S.C. §§4246 and 4247, an evaluation was needed to  
10 determine whether Meno's release would create a substantial risk of bodily injury to  
11 another person or serious damage to another's property pursuant to 18 U.S.C. §§ 4246  
12 and 4247. Counsel for Meno agreed that before the Indictment could be dismissed a  
13 dangerousness evaluation was required pursuant to 18 U.S.C. §§ 4246 and 4247.  
14 However, Counsel for Meno objected to transferring Meno back to FMC-Butner, and  
15 instead, requested the evaluation be conducted locally, where Meno resides and where  
16 he has family support. See Min. of Proc. 3/28/2013, (Doc #55).  
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20 On April 5, 2013, the Court filed an Order based on 18 U.S.C. §§ 4246 and 4247,  
21 granting the Government's request to have Meno examined, but denied its request that the  
22 Bureau of Prisons conduct the evaluation. For the reasons set forth more fully in the Court's  
23 April 5, 2013, written Order (Doc #57), the court directed Meno be evaluated for purposes of  
24 18 U.S.C. §§ 4241, 4246, 427, 4248 by a local board certified psychiatrist. Counsel for the  
25 parties conferred and stipulated to use Dr. Dodge Slagle, the psychiatrist who originally  
26 evaluated Meno's competency to stand trial in December 2011.  
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Dr. Slagle evaluated Meno on April 19, 2013, at the Southern Nevada Detention

1 Center in Pahrump, Nevada. A written psychiatric evaluation was prepared but Dr. Slagle did  
2 not provide a copy to the Court. Dr. Slagle concluded that future long term dangerousness  
3 cannot be predicted with medical certainty, and while there is always could be a potential  
4 future risk of danger to others or property, it is not high. Dr. Slagle opined that Meno's  
5 current mental and physical limitations brought on by his brain injury has substantially  
6 reduced his risk of violence.  
7

8 On April 30, 2013, counsel stipulated to continue the May 1, 2013, calendar call and  
9 May 6, 2013, trial, indicating they were still awaiting Dr. Slagle's evaluation. (Doc #59). The  
10 district judge approved the parties' Stipulation and continued the trial until August 19, 2013.  
11 See Order (Doc #60). On August 16, 2013, counsel again stipulated to continue the August  
12 19, 2013, trial date, stating, "It is clear Mr. Meno is not competent to stand trial. Counsel for  
13 the government feels that clarification from Dr. Dodge Slagle regarding whether the  
14 Defendant is a danger to himself, others or property." See Stipulation (Doc. #62). The district  
15 judge approved the parties' Stipulation and continued the trial to October 7, 2013. See Order  
16 (Doc. #65).  
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18 On July 16, 2013, Dr. Slagle drafted an addendum to his original report opining that  
19 although future human behavior can never be predicted with absolute certainty, it was his  
20 professional opinion to a reasonable degree of medical probability that Meno was not a danger  
21 to himself, others, or property for reasons summarized in his prior report. The letter addendum  
22 was forwarded to counsel for Meno on July 18, 2013.  
23

24 On September 23, 2013, the Court filed an Order to Show Cause why the Indictment  
25 should not be dismissed and Meno released from federal custody. As stated and explained more  
26 fully in the Order, the Court believed that all statutory requirements under 18 U.S.C. §§4241-47,  
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1 were met and that the case should be dismissed but that the exact procedure for doing so was  
2 not clear under 18 U.S.C. §4241(d). During the show cause hearing on September 24, 2013, the  
3 Court stated it believed it needed a formal motion to dismiss the indictment, however, Counsel  
4 for Meno thought that the Government intended to dismiss the case based on their prior  
5 representations and that now the issue was simply one of complying with 18 U.S.C. §4241(d)  
6 and the determination of dangerousness.  
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8 On or about September 27, 2013, Meno filed a motion seeking a hearing pursuant to 18  
9 U.S.C. §4246 and to dismiss the Indictment. (Doc. #71). On or about October 7, 2013, the  
10 Magistrate Judge issued a Report and Recommendation (R&R). (Doc. #72). The R&R  
11 recommended that Meno's motion be denied, but that the Indictment be dismissed but stayed  
12 while a dangerousness assessment be conducted at a Federal Medical Center. On or about  
13 November 13, 2013, the District Court filed an Order adopting the R&R in full.  
14

15 After several problems occurred getting Meno transported to the Federal Medical Center  
16 in Butner, North Carolina, Meno was eventually evaluated for dangerousness. A status hearing  
17 was held in court on July 13, 2015, and the Forensic Evaluation was distributed to counsel for  
18 Meno and the government. Another status conference was set for July 28, 2015, so that the  
19 parties would be able to review the evaluation and determine how to proceed.  
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21 On July 23, 2015, Meno filed a Motion to Dismiss Indictment based on the findings of  
22 the evaluation for dangerousness and the results stating that Meno would not pose a danger if  
23 released. On July 27, 2015, the Government filed a Joinder of Defendant's Motion to Dismiss.  
24

25 On July 28, 2015, a status hearing was held, and counsel for Meno and the Government  
26 were informed that Meno was in transit and would not be back in Las Vegas until August 3,  
27 2015. Another status hearing is set for August 4, 2015.  
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1 Counsel for Meno and the Government were informed by Magistrate Judge Leen that a  
2 Stipulation of Facts and Conclusions of Law needs to be filed with the District Court so that it  
3 may formally dismiss the indictment.  
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5 In summary the evaluation states that Meno is not a danger and is ready to return to  
6 court for resolution of his legal situation. Since the Indictment against Meno was dismissed but  
7 stayed for the dangerousness evaluation, now that Meno has been determined to not be a danger,  
8 he is asking and the Government joins that the Indictment be dismissed in full, and that he be  
9 released from custody.  
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11 **ORDER**

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13 IT IS HEREBY ORDERED that the Indictment be dismissed in full and that he be released  
14 from custody.

15  
16 DATED August 4, 2015.

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19 U.S. DISTRICT JUDGE  
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